



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2004

Ms. Paige Glicksman
Assistant City Attorney III
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2004-8400

Dear Ms. Glicksman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210264.

The City of Plano (the "city") received a request for information concerning the maintenance of a specified location, information related to the city's insurance coverage and limits, including a copy of the insurance policy in effect on a specified date, and a request for dates on which the requestor may obtain a video-recorded statement from a representative of the city. You first claim that the requested information, or portions thereof, is not public information as defined by section 552.002 of the Government Code. You also claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially we address your argument that a portion of the requested information does not fit the definition of public information under section 552.002. The Act only applies to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental

¹We note that section 552.02 does not exist in chapter 552 of the Government Code. We presume you mean to refer to section 552.002, which is not itself an exception to disclosure, but rather a provision of the Act that defines "public information" for purposes of the Act.

body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002. You indicate that information responsive to items one and six of the request does not fit the definition of public information under section 552.002. However, we have reviewed the submitted information and conclude that it is “public information” subject to the Act.

However, we also note that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See* Gov’t Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to information that is within the governmental body’s possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

Next, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted insurance policy consists of information in a contract relating to the expenditure of funds by a governmental body. Thus, pursuant to section 552.022(a)(3), the city may only withhold the submitted insurance policy if it is confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body’s interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Consequently, the city may not withhold the information at issue under section 552.103 of the Government Code.

We note, however, that the submitted information contains an insurance policy number that is subject to section 552.136 of the Government Code. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental

body is confidential.” Gov’t Code § 552.136. The city must, therefore, withhold the insurance policy number we have marked on numerous pages under section 552.136. As you make no other arguments against disclosure, you must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

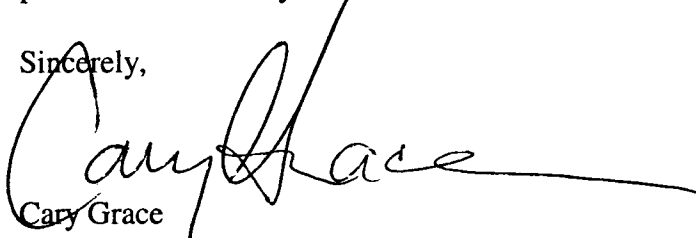
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 210264

Enc. Submitted documents

c: Mr. David S. Hughey
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(w/o enclosures)